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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,832	01/16/2004	William Robert Mass	279.B36USI	7138

21186 7590 10/10/2006

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

MANUEL, GEORGE C

ART UNIT PAPER NUMBER

3762

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,832

Applicant(s)

MASS ET AL.

Examiner

George Manuel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 6/9/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 2, 4, 11, 12, 15, 16 and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barreras '397.

Barreras discloses a battery powered controller unit 20 that has a battery 70 and an inductive coil 82.

Regarding claims 4 and 16, when a "fully charged" command signal is decoded by demodulator/decoder 84, transmitter electronic module 76 then illuminates the "stimulator full" light or LED 78, and the RF coupled power transmitted by inductor 82 is turned OFF, inherently opening a switch to inductor 82 while still powering the controller for illumination of LED 78. When the inductor 82 is transmitting, said inductor switch allows the battery 70 to power both the controller 20 and the inductive coil 82.

Regarding claim 11, the examiner is interpreting speaker 80 to comprise a voltage reducing device, the speaker reduces the battery bower power when transmitting an audible alarm.

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Regarding claims 12 and 15, battery 70 is shown to be in parallel with module 76, and in parallel with inductor 83. See Fig. 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-10, 13, 14, 17 and 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barreras '397 in view of Fayram '511.

Barreras discloses a rechargeable battery 70 for powering both the controller unit 20 and the inductor 82.

Fayram discloses a battery network 12 including a first or "dense" cell 20 and a second or "fast" cell 22 connected in parallel between a ground node 24 and an output node 26, with the battery cathodes connected to the ground node, and the anodes connected to the output node. The cells are connected directly in parallel to each other with an optional current limiting device 32. One of ordinary skill in the art would have found it obvious to modify the current limiting device with a switch because the intended use for the controller is outside of the patient's body and size does not limit the battery structural configuration. Fayram does teach if size is not a factor, one could use a switch arrangement in place of a fuse. See col. 3, lines 1-10.

One of ordinary skill in the art would have found it obvious to substitute the

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battery 70 of Barreras with the two battery arrangement of Fayram with a switch arrangement for powering the coil 82 with a first cell similar to a lithium battery 20 as disclosed in Fayram, and to power the controller unit 20 with a second cell similar to cell 22 as disclosed in Fayram because coil 20 requires a higher energy density than the circuit for controlling the controller unit 20.

Regarding claim 6, both cells 20 and 22 are disclosed in Fayram as having an open circuit voltage of 3.2 volts that is within the range of 2 to 12 V.

Regarding claim 7, one of ordinary skill in the art would have found a silver oxide battery to be an obvious substitute for the silver-zinc chemistry as disclosed in Fayram for cell 20.

Regarding claim 10, one of ordinary skill in the art would have found it obvious to provide a voltage amplifying device to the inductor 82 for the purpose of impedance matching with inductor 30 because this increases the efficiency of power transfer between the two inductors.

Response to Arguments

Applicant's arguments filed 6/9/06 have been fully considered but they are not persuasive. Applicant's assertion that Barreraras does not disclose that inductor 82 is configured to communicate with an inductive coil of the implanted device using inductive telemetry is without merit; the inductor 82 communicates with inductor 30 as illustrated in Fig.1.

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In response to applicant's argument that Fayram is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Fayram is in applicant's field of endeavor, battery technology.

Applicant's remark that no evidence exists that one of ordinary skill would find a silver oxide battery to be an obvious substitute for a silver-zinc chemistry is contrary to the knowledge one of ordinary skill has in the medical device arts. Silver oxide and silver-zinc batteries are well known for their high current carrying capability.


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.


George Manuel
Primary Examiner
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